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OFFICE OF PETITIONS

In re Application of :
Fu-Ling Hung :
Application No. 10/692,427 : DECISION DISMISSING
Filed: 22 October, 2003 : PETITION
Attorney's Docket No. 870-03090301 :

This is a decision on the petition filed on 18 March, 2004, which is treated as a petition under 37 CFR 1.53 to accord the above-identified application a filing date of 22 October, 2003, with Figures 17-24 as a part of the original disclosure.

The petition is **DISMISSED**.

On 22 October, 2003, the application was filed. On 23 January, 2004, however, Initial Patent Examination Division mailed a "Notice to File Corrected Application Papers" stating that the application had been accorded a filing date of 22 October, 2003, but that, *inter alia*, Figures 17-24 described in the specification appeared to have been omitted from the application. A two (2)-month period for reply was set.

In response, on 18 March, 2004, the present petition was filed. Petitioners argue that Figures 17-24 were filed with the other application papers deposited in the USPTO on 22 October, 2003. In support, petitioners supplied on 18 March, 2004, a copy of 23 pages of specification containing Figures 1-24, as well as a copy of a postcard receipt bearing a USPTO Office date stamp of 22 October, 2003, and the above-identified application number and itemizing the filing of "Drawings."

A review of the record reveals that 10 sheets of drawings containing Figures 1-16 are located in the application file. Figures 17-24, however, cannot be located among the application papers deposited on 22 October, 2003.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.¹

Petitioner's argument has been considered, but is not persuasive. The showing of record is that 10 sheets of drawings containing Figures 1-16 were received in the Office on 22 October, 2003, and petitioner's postcard receipt reflects that the Office received the items listed above. While the postcard itemizes the filing of drawings, the postcard receipt does not itemize the filing of Figures 17-24, or any particular figures or sheets at all. Absent a showing that Figures 17-24 were located within the 10 sheets of drawings received in the Office on 22 October, 2003, petitioners simply have no evidence that Figures 17-24 were located among the application papers received in the Office on that date.

Petitioner may submit Figures 17-24 in the form of a preliminary amendment. If Figures 17-24 are submitted as a preliminary amendment, it will be reviewed by the examiner for new matter.

As the petition resulted from applicant's filing error and not as a result of an error on the part of the Office, a petition fee of \$130.00 is due and has been charged to counsel's credit card.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 22 October, 2003, using the application papers filed on that date. The drawing sheets supplied with the present petition will

¹MPEP 503.

not be processed or examined, but will be retained in the application file.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.

D Wood
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Office of Petitions